IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6575 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAIN CITIZENS' EDUCATION SOCIETY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6575 of 2001
MR DEVANG NANAVATI FOR NANAVATI & NANAVATI for Petitioners
MR PREMAL JOSHI AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/11/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner school which is run by Jain Citizens' Education Society, a Trust registered under the provisions of the Bombay Public Trusts Act, 1950 and is a minority institution within the definition

of Article 30 of the Constitution, seeks to challenge the show cause notice dated June 5, 2001 at Annexure A issued by the Audit Officer, Office of the Commissioner of Higher Education, Gujarat State, Gandhinagar, and prayed to issue a writ of mandamus or a writ in the nature of mandamus quashing and setting aside the said show cause notice at Annexure A.

2. The petitioner school was served with the show cause notice dated June 5, 2001 issued by the Audit Officer, Office of the Commissioner of Higher Education, Gujarat State, wherein the respondents have sought recovery of Rs.8,96,586/- on the ground that in certain appointments made by the school, the school could not produce the original record of appointment procedure like advertisement, attendance of candidates, marking system resolution of the selection Committee, etc., and the alleged recovery is for the years 1984-85 to 1991-92. The petitioner school seeks to challenge the said show cause notice as being violative of Article 30 of the Constitution and dehors the provisions of Gujarat Secondary Education Act, 1972 ('the Act' for short hereinafter) and the Secondary Education Regulations, because the petitioner school has exclusive right to choose its teaching and non-teaching staff and it is a fundamental right of the minority institution and the authority cannot seek the recovery on that ground.

3. The petition is contested by the respondents by filing affidavit in reply wherein a preliminary objection is raised that the petition is filed against the issuance of show cause notice. It is further contended that under the provisions of Grant-in-Aid Code every institution receiving grant is governed under the provisions of the Grant-in-Aid-Code and as such is required to produce record for the purpose of audit of the same. The petitioner school is receiving 100% grant from the State Government and is bound by the provisions of Grant-in-Aid Code and is, therefore, bound to furnish the record though the petitioner school is exempted by virtue of it being a minority institution before issuing advertisement, attendance of candidates, etc. It is further contended that by virtue of exemption granted under section 40(A) of the Act and Regulation 43 of the Secondary Education Regulations, the petitioner school is exempted from following the procedure of appointment such as advertisement, etc., but that does not ipso facto preclude the authority from seeking for record with regard to the admission/appointment procedure adopted.

4. Mr. Nanavati, learned advocate for the

petitioners, has made his submissions elaborately indeed and according to him though the petition is filed against the issuance of show cause notice, it is maintainable as in view of the fact that the petitioner school is a minority institution and the impugned show cause notice is against the statutory provisions of Section 40 (A) of the Act as well as the Government resolution issued by the State Government in exercise of powers conferred under Section 35 of the Act. He therefore urged to allow the petition.

5. Mr. Joshi, learned AGP has raised a preliminary objection that the petition is premature as it is filed against the show cause notice and, therefore, the petitioner may be directed to file reply to the show cause notice and the concerned authority may be directed to decide the reply in accordance withy law. This petition may, therefore, be rejected.

6. I have heard the learned advocates for the parties. I have perused the averments made in the petition and the documents annexed therewith and I have also considered the statutory provisions of the Act, Secondary Education Regulations and the Government Resolution.

7. On having perusal of the impugned show cause notice dated June 5, 2001 at Annexure A, it inter alia contends that recovery of Rs.8,96,586/- has been sought for on the ground that in certain appointments made by the petitioner school, the petitioner school could not produce the original record of appointment procedure like advertisement, attendance of candidates, etc., and this was pertaining to the years 1984-85 to 1991-92. In the said show cause notice, opportunity is given to the petitioners to file reply. But instead of filing reply, the petitioners have approached this Court by way of this petition.

8. The petitioners have raised several contentions in the petition including interpretation of Section 40 (A) as well as 17 (26) of the Act as well as Grant in Aid Code, regulation 43 of the Secondary Education Regulations 1974 and Government resolution issued under Section 35 of the Act. According to me, instead of deciding the same here as the petition is filed against the show cause notice, the petitioners can raise all these contentions before the Audit Officer, Office of the Commissioner of Higher Education, Gujarat State by filing their detailed reply which shall be considered by the authority in accordance with law.

9. In view of the aforesaid state of affairs, the petitioner - Trust is directed to file its detailed reply making all the averments available to it and also the averments which are raised in this petition within a period of four weeks hereof which shall be decided by the authority within a period of four weeks thereafter, in accordance with law. It may be made clear that I have not decided this petition on merits. Since this petition is directed against the show cause notice, the petitioners are directed to file their reply before the Audit Officer, Office of the Commissioner of Higher Education, Gujarat State and with that direction this petition is disposed of. The Audit Officer shall, therefore, decide the reply that may be submitted by the petitioners, as aforesaid, on merits and in accordance with law, uninfluenced by the fact that the petitioners has approached this Court Court and this Court has disposed of the petition by directing them to approach the concerned authority by filing reply to the show cause notice. Till the Audit Officer decides the reply that may be submitted by the petitioners, recovery under the impugned show cause notice at Annexure A dated June 5, 2001 shall stand stayed. It is further made clear that if ultimately any order is passed adverse to the petitioners, the recovery sought for under the impugned show cause notice at Annexure A shall stand stayed for a period of four weeks from the date of communication of the said order to the petitioners, to enable them to take appropriate remedy against that decision.

10. With the aforesaid observations and directions, the petition is disposed of. Rule is discharged. Ad-interim relief stands vacated. No order as to costs.

(A.M. Kapadia, J.)

(karan)